

REMARKS

Together with this Submission, Applicants have concurrently submitted a Request for Continued Examination and a Declaration Under 37 C.F.R. § 1.132 by Mr. COTTERET.

I. Status of Claims

Claims 1-91 are pending. No claim is amended.

II. Rejections Under 35 U.S.C. § 103

A. Rejection Over Grollier

The Examiner has maintained the rejection of Claims 1-6, 9-20, 26, 29-39, and 43-91 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 4,842,849 to Grollier et al. ("*Grollier*"), for the reasons disclosed on pages 2-3 of the final Office Action. Applicants continue to traverse the rejection for reasons of record. Moreover, the Declaration of Mr. COTTERET supports Applicants' position that the claimed invention would not have been obvious to one skilled in the art.

During the course of prosecution in this case, the Examiner has contended that *Grollier* would have provided sufficient motivation to one skilled in the art to make a dyeing composition comprising any combination of cationic polymers including the cyclohomopolymers and quarternary ammonium polymers as presently claimed "because all these cationic polymers are suggested by the prior art and are available to . . . be used in dyeing compositions with a reasonable expectation of achieving composition[s] for dyeing hair." Applicants disagree.

Specifically, as argued of record, Applicants contend that the claimed invention possesses unexpected superior properties that were not suggested by *Grollier*. In his Declaration, Mr. COTTERET describes testing with Comparative Composition A containing an aqueous solution of a polycondensate of tetramethyl hexamethylenediamine/dichloro 1,3-propylene, Comparative Composition B containing MERQUAT 100, a 40% aqueous solution of polydimethyl diallyl ammonium chloride, and Inventive Composition C containing both these polymers. The results indicate that when applied to hair, Inventive Composition C provides a coloration more intense and thus superior to both Comparative Compositions A and B. These results are unexpected given that it was not known and could not be predicted that the use of both polymers together would significantly improve the coloration of the hair. Because one skilled in the art would have been surprised by these results, the Declaration supports Applicants' position that the claimed invention would have not have been obvious. Accordingly, Applicants respectfully request that the Examiner withdraw this improper rejection.

B. Rejection of Grollier in view of De le Mettrie

The Examiner also rejects claims 7-8, 21-25, 27-28, and 40-42 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,976,195 to *de la Mettrie et al.* in view of *Grollier* for the reasons disclosed on page 2 of the Office Action. Applicants respectfully traverse this rejection for the reasons of record and the additional reason below.

The Examiner relies on *de le Mettrie* to make up for *Grollier's* deficiencies. Specifically, the Examiner contends that one skilled in the art would have selected the

cationic polymers, oxidation bases, and oxidizing agents of *de le Mettrie* to add to *Grollier's* dye composition. But as discussed above, Mr. COTTERET'S declaration demonstrates that it would not have been obvious to modify the *Grollier* reference, accordingly, this further combination is also improper. Accordingly, for at least this additional reason, the rejection should be withdrawn.

Examiner Elhilo is invited to call Mareesa Frederick at 202-408-4103 if he has any questions regarding the Declaration or if he believes that the results shown therein do not put this case in condition for allowance.

If there is any fee due in connection with the filing of this Submission, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 10, 2005

By: Mareesa A. Frederick
Mareesa A. Frederick
Reg. No. 55,190



PATENT
Customer No. 22,852
Attorney Docket No. 5725.0826-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Cécile BEBOT et al.) Group Art Unit: 1751
)
Application No.: 09/750,717) Examiner: E. Elhilo
)
Filed: January 2, 2001)
)
For: COMPOSITIONS FOR)
OXIDATION DYEING KERATIN)
FIBERS COMPRISING AT LEAST)
TWO PARTICULAR)
QUATERNARY)
POLYAMMONIUMS AND USES)
THEREOF)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, Jean COTTERET, declare and state that:

1. I am a French citizen, residing at 13 rue du Pré Rousselin, 78480

VERNEUIL SUR SEINE, France.

2. I am a Chemical Engineer graduated from Ecole Nationale Supérieure de Chimie de Paris (ENSCP), France.

3. I am currently employed as a Manager's Assistant of the Applied Research and Development Center of L'OREAL where I have been employed since October 1st, 1976 and I have carried out research on hair treatment and dyeing and hair dye compounds and compositions during the time of my employment with L'OREAL.

4. Given my education and experience, particularly in the area of hair dyeing, I consider myself able to provide the following testimony based on the experiments conducted by me or under my direct supervision.

5. The following experiments were completed under standard laboratory conditions and compare Comparative Composition A, Comparative Composition B, and Inventive Composition C.

COMPARATIVE EXPERIMENTS

I. Preparation of Compositions

The following compositions were prepared (see table below). Comparative Composition A contains, an aqueous solution of a polycondensate of tetramethyl hexamethylenediamine/dichloro 1,3-propylene. Comparative Composition B contains, MERQUAT 100, a 40% aqueous solution of polydimethyl diallyl ammonium chloride. Inventive Composition C contains both these polymers. The ingredients are expressed by weight of active substance.

	Comparative Composition A	Comparative Composition B	Inventive Composition C
Lauryl acid	3	3	3
Lauryl alcohol (12 EO)	7	7	7
Cetylstearyl alcohol (C16/C18 50/50)	11.5	11.5	11.5
Glycol distearate	2	2	2
Oleocetyl alcohol (30 EO)	4	4	4
Decyl alcohol (3 EO)	9	9	9
Hydrophobic pyrogenated silica	1.2	1.2	1.2
monoethanolamine	1.35	1.35	1.35
Polycondensate of tetramethyl hexamethylenediamine / dichloro 1,3- propylene (aqueous solution)	3.5	0	1.75
polydimethyl diallyl ammonium chloride (aqueous solution 40%; MERQUAT 100)	0	3.5	1.75
Propylene Glycol	7	7	7
Carboxyvinilic polymer in ethyl acetate / cyclohexane	0.6	0.6	0.6
Sequestering agent	0.8	0.8	0.8
Perfume	0.95	0.95	0.95
Titanium dioxide	0.15	0.15	0.15
antioxidant	0.46	0.46	0.46
L-ascorbic acid	0.25	0.25	0.25
1,4-diamino-benzene	0.51	0.51	0.51
1-hydroxy-4-amino-benzene	0.36	0.36	0.36
1,3-dihydroxybenzene	0.011	0.011	0.011
1-methyl-2-hydroxy-4-beta- hydroxyethylamino-benzene	0.56	0.56	0.56
1-methyl-2-hydroxy-4-amino-benzene	0.56	0.56	0.56
2-amino-3-hydroxypyridine	0.3	0.3	0.3
Aqueous ammonia (20% of ammoniac)	2.7	2.7	2.7
Water	Qsp 100	Qsp 100	Qsp 100

II. Testing Procedure

Each of the compositions was mixed with an oxidizing composition comprising hydrogen peroxide (20 volumes), with a dilution ratio of 1:1.5. Each of the resulting mixtures was applied to locks of sensitized hair (bath ratio 1/10). Each composition was then allowed to act for 30 minutes at ambient temperature and was rinsed, washed with shampoo, rinsed again, and dried.

The color of the hair was determined by using the CIE L*a*b* system, with a Minolta CM-2022 colorimeter. The table below indicates the values of the L* coefficient and its variation between the composition according to the invention and the comparative compositions.

The lower the value of L*, the more intense the color obtained.

III. Results

The results are expressed in the following table:

	L*	Variation of L* with Composition C
Composition C (inventive)	19.9	-
Composition A	22.3	2.4
Composition B	22.0	2.1

IV. Analysis of Results

The results in the table above demonstrate that Inventive Composition C provides a coloration that is significantly more intense ($L^*=19.9$) than that obtained with Comparative Composition A ($L^*=22.3$) and Comparative Composition B ($L^*=22.0$). In other words, Inventive Composition A, comprising a combination of cationic polymers, i.e. both a cyclohomopolymer of dialkyldiallylammonium and a quaternary polyammonium polymer, provides a coloration superior to Comparative Compositions A and B, each comprising only one type of cationic polymer.

Based on my education and experience, these results are unexpected, given that it was not known that the use of both polymers together would significantly improve the coloration of the hair.

8. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: August 10, 2005

By: Jean COTTERET
Jean COTTERET